

COVINGTON

BEIJING BRUSSELS DUBAI FRANKFURT JOHANNESBURG
LONDON LOS ANGELES NEW YORK SAN FRANCISCO
SEOUL SHANGHAI SILICON VALLEY WASHINGTON

Matthew S. DelNero

Covington & Burling LLP
One CityCenter
850 Tenth Street, NW
Washington, DC 20001-4956
T +1 202 662 5543
mdelnero@cov.com

October 19, 2018

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th St. SW
Washington, DC 20554

Re: *Ex parte* presentation in WC Docket No. 18-155

Dear Ms. Dortch:

On October 17, 2018, Scott Sawyer, General Counsel of Inteliquent, Inc. (“Inteliquent”), and the undersigned, counsel to Inteliquent, discussed Inteliquent’s views in the above-referenced proceeding with the following members of the Wireline Competition Bureau: Lisa Hone, Pam Arluk, Al Lewis, Ed Krachmer, Greg Capobianco and, by telephone, Lynne Engledow and Douglas Slotten.

In particular, the Inteliquent representatives expressed agreement with the Commission’s unanimous finding in the *Access Arbitrage NPRM* that high-volume calling platforms today artificially drive up costs of interexchange carriers (“IXCs”) and their customers by using telephone numbers provided by LECs that subtend to centralized equal access (“CEA”) providers in Iowa and South Dakota.¹ These calls are not “free.” They are, in fact, paid for by IXCs and, ultimately, their end-user customers. The Commission can address this problem, in part, by adopting the *NPRM*’s proposal to require access stimulating LECs to pay the costs of receiving traffic.

The Inteliquent representatives also highlighted the company’s proposal to cap mileage charges by access stimulating LECs to ten miles. Inteliquent and other carriers, including AT&T and Verizon, have documented the ongoing problem of mileage pumping by access stimulating LECs.² This 10-mile cap would be the maximum number of tandem transport miles for which

¹ *Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*, WC Docket No. 18-155, Notice of Proposed Rulemaking, FCC 18-68 at para. 7 (rel. June 5, 2018) (*Access Arbitrage NPRM*).

² *See, e.g., AT&T Comments* at 8 (“As the transition to bill and keep has reduced arbitrage opportunities for terminating end office access charges, unscrupulous carriers turned instead to mileage pumping schemes, manipulating tandem and transport charges to support arbitrage schemes...”); *Verizon Comments* at 2 (“[H]igh

COVINGTON

October 19, 2018

Page 2

charges can be assessed, inclusive of miles between the end office and a tandem, on the one hand, and the end office and a remote terminal, on the other. It would allow carriers to recover legitimate costs, while reducing the incentive to engage in abusive mileage pumping and other harmful practices. The Inteliquent representatives also pointed out the benefits of adopting a national capped rate for tandem switching and common transport, as Inteliquent previously has advocated.

Adopting the above-described proposals will stop *some*, but not *all*, access arbitrage. The Inteliquent representatives accordingly urged that the Commission additionally take steps to stop the latest access arbitrage scheme plaguing the public switched telephone network.

In this new form of arbitrage, a high-volume calling platform obtains telephone numbers from one or more rural LECs subtended behind a CEA provider in Iowa or South Dakota. When an IXC or intermediate provider such as Inteliquent hands off the call to the CEA, this traffic is intentionally rejected by the LEC and/or the calling platform connected to the LEC end-office. When the same call is then re-routed directly or indirectly to the calling platform's affiliated intermediate provider, the call completes successfully. In these cases, the *only* means of delivering the calls is through the calling platform's proprietary network, because the calls are rejected when delivered over the regulated pathway from the CEA to the end office to the calling platform.

The CEAs in Iowa and South Dakota, Aureon and South Dakota Networks, have confirmed Inteliquent's description of this call blocking scheme in their comments to the Commission.³ Further, multiple LECs have confirmed to Inteliquent that the rejected calls were not caused by them but by the conference bridge and/or its affiliates. Some of these LECs were not even aware of the amount of the traffic that was being sent to the conference platform.

The Commission should call this new scheme for what it is: fraud. The sole purpose of blocking the traffic is to cause it to be re-routed to an affiliate of the high-volume calling platform, to the benefit of that affiliate and/or the calling platform. If the calls were allowed to

transport charges—along with the mileage pumping that occurs when service providers designate distant points of interconnection to inflate the mileage used to compute the transport charges—remains a widespread and growing practice.”) (internal citations and quotations omitted).

³ See, e.g., *Updating the Inter-carrier Compensation Regime to Eliminate Access Arbitrage*, WC Docket No. 18-155, Comments of South Dakota Network, LLC at 3 (filed July 20, 2018) (“SDN has experienced a tremendous number of terminating calls, sometimes thousands per day, that, from SDN’s perspective, are being rejected by a CLEC engaged in access stimulation in connection with a ‘free’ conference calling customer.”); *Updating the Inter-carrier Compensation Regime to Eliminate Access Arbitrage*, WC Docket No. 18-155, Reply Comments of Iowa Network Services d/b/a Aureon Network Services at 18 (filed Aug. 3, 2018) (“Aureon has experienced this very sort of arbitrage, whereby calls routed by Aureon to a LEC are blocked, but when calls are routed to the LEC through HD Tandem, those calls miraculously complete. It is unlawful for access stimulators to block calls and prevent them from being completed over the CEA network, yet this is the mechanism used to carry out access arbitrage.”).

COVINGTON

October 19, 2018

Page 3

complete over the regulated pathways, then the rural LECs and the CEA tandem would be paid the tariffed terminating access charges. But if the calls are rejected/blocked, the affiliated private network of the high-volume calling platform has the apparent ability to capture all of the revenues associated with traffic pumping operations.

At a minimum, the Commission should take two steps to put a stop to this call-blocking scheme. First, the Commission should state unequivocally that the intentional blocking or rejecting of calls for the purpose of financial gain is unlawful. In addition to taking enforcement action against all perpetrators involved, the Commission should require the LEC serving the calling platform to investigate and promptly stop large-scale rejection or blocking of traffic by one of its customers. If the customer is accepting the same traffic when delivered to it through an intermediate provider, that would be conclusive evidence that there is no legitimate rationale for the call blocking—in which case the LEC is the best-positioned, regulated entity to cause the customer to cease the harmful call blocking.

Second, the Commission should clarify that IXCs and intermediate providers that successfully hand off traffic to a tandem designated by a LEC in the LERG have met their call completion duties.

Taking these simple steps would put access stimulating LECs and their high-volume calling partners on notice that they cannot profit from blocking or rejecting the very calls that they have stimulated. In contrast, failure to take action risks emboldening certain high-volume calling platforms to fraudulently divert yet more traffic from the regulated pathways of the PSTN and on to their own affiliated networks.

Please direct any questions to the undersigned.

Sincerely,

/s/

Matthew S. DelNero
Counsel for Inteliquent Inc.

cc: Meeting attendees